

REMARKS

In the **final** Office Action mailed December 8, 2009 the Office noted that claims 1-6, 8 and 9 were pending and rejected claims 1-6, 8 and 9. In this amendment claims 1, 3, 6 and 8 have been amended, no claim has been canceled, and, thus, in view of the foregoing claims 1-6, 8 and 9 remain pending for reconsideration which is requested. No new matter has been added. The Office's rejections are traversed below.

REJECTIONS under 35 U.S.C. § 112

Claims 1-6, 7 and 9 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

The Applicant has amended the claims to overcome the rejection of the Office. Support for the amendment may be found, for example, in ¶¶ 0024, 0025 and 0062-0064 of the printed publication version of the Specification. The Applicant submits that no new matter is believed to have been added by the amendment of the claims.

Claims 1-6, 7 and 9 stand rejected under 35 U.S.C. § 112, first paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

With regards to claim 1, the Applicant has amended the

claims to overcome the rejection. Support for the amendment may be found, for example, in ¶¶ 0062-0064 of the printed publication of the Specification. The Applicant submits that no new matter is believed to have been added by the amendment of claim 1.

Withdrawal of the rejection is respectfully requested.

REJECTIONS under 35 U.S.C. § 101

Claims 1-6, 7 and 9 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In particular, the Office asserts that the claim fail the machine and transformation test as set forth in *In re Bilski*. The Applicant has amended claim 1 to have the steps of the method performed by a programmed processor. Support for the amendment may be found, for example, in ¶¶ 0013, 0046 and 0168 of the printed publication version of the Specification. The Applicant submits that no new matter is believed to have been added by the amendment of claim 1.

In particular, ¶ 0013 states “[t]he invention consists of a **computer aided surgical system**, enabling the surgeon to simulate effects of corrective surgery that he is considering using on the patient, before the operation.” (Emphasis added) ¶ 0046 states “[s]ince data processing is done by software, the invention also relates to the software architecture used to implement the functional architecture. The software structure comprises several **database servers**: a users database, a vertebra

database, a patients database and an implants database." ¶ 0168 states "The architecture of the **program** is based on a modular structure corresponding to each independent calculation step."

Thus, one of ordinary skill would understand that the present method is implemented as computer aided surgical system or program that is executed by a processor (i.e. a server).

Withdrawal of the rejection is respectfully requested.

SUMMARY

It is submitted that the claims satisfy the requirements of 35 U.S.C. §§ 112 and 101. It is also submitted that claims 1-6, 8 and 9 continue to be allowable. It is further submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

/James J. Livingston, Jr./

James J. Livingston, Jr.

Reg. No. 55,394

209 Madison St, Suite 500

Alexandria, VA 22314

Telephone (703) 521-2297

Telefax (703) 685-0573

(703) 979-4709

JJL/fb